

The Administrative Law Judge (ALJ) denied claimant workers compensation benefits for an alleged work-related right knee injury. The ALJ found claimant failed to prove that his right knee injury arose out of and in the course of his employment with respondent. Furthermore, the ALJ found, even if claimant suffered a work-related right knee injury, he failed to prove he gave respondent timely notice of the accident.

Claimant contends he proved through his testimony that he injured his right knee at work and served respondent timely notice of the accident. As a result of the alleged work-related injury, claimant required right knee surgery. Claimant argues he is entitled to an award based on a 10 percent permanent partial disability of the right lower extremity.

The respondent, however, requests the Appeals Board to affirm the Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award should be affirmed. Moreover, the Board agrees with the ALJ's analysis of the evidence and his findings and conclusions as set forth in the Award. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as if specifically set forth herein.

The Board finds the Award that denied claimant workers compensation benefits is particularly supported by the representatives of the respondent who testified in this case.

Claimant alleged he injured his right knee at work in an unwitnessed accident either on the first or second Thursday of December 1999. He alleged he immediately reported the accident to his acting supervisor Duane D. Davis. At the time claimant allegedly reported the accident, claimant claims Mr. Davis told him not to report the accident until he was off probation because he could get in trouble. Claimant continued to work but his right knee injury required him to walk with a pronounced limp until he was discharged by the respondent on January 3, 2002, for substandard performance.

At the time of the discharge, claimant alleges he requested an accident report form from his supervisor Kenneth "Sticks" Johnson. Claimant testified Mr. Johnson gave him the accident report form and claimant completed the form out in the parking lot and returned the report to Mr. Johnson.

Claimant alleges that he attempted to self-treat his knee with the various treatment methods he had experienced from the numerous previous right knee injuries he had suffered. In February 2000, claimant testified he received a letter from respondent's workers compensation insurance carrier that denied his workers compensation claim. Claimant then sought medical treatment for his knee injury through the Veterans Administration Hospital in Wichita, Kansas. On July 19, 2000, claimant underwent surgery for his right knee injury at the Veterans Administration Hospital.

Duane D. Davis, the acting third shift lead on claimant's alleged date of accident, Kenneth "Sticks" Johnson, claimant's third shift lead, and Deborah R. Gibson, respondent's risk manager all testified in this case. Additionally, the parties stipulated into the record the Affidavit of Linda Wilkins, the adjuster for respondent's insurance carrier. The testimony of these individuals specifically contradicts claimant's testimony in regard to the allegations that he injured his right knee at work, continued to work with a pronounced limp, immediately notified his acting supervisor Mr. Davis of the accident, completed the accident report, and received a letter from respondent's workers compensation insurance carrier denying his claim.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bruce E. Moore's March 29, 2002, Award, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott M. Price, Attorney for Claimant
Alisa Nickel, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation